IN THE HIGH COURT OF JUDICATURE
AT BOMBAY

CRIMINAL APPEAL NO.1158 OF 2005

Arvind Meghan Das, aged 32 years
of Mumbai, Indian Inhabitant
currently incarcerated at Kolhapur
Central Prison, Kolhapur, formerly
residing at 91 Fakir Mohammed Bldg.
Ground floor, Shop No.9,
Undriya Street, Nagpada,
Mumbai 400 008. ...Appellant

Vs.

The State of Maharashtra
(J.J.Marg Police Station) ...Respondent

Mr.Yog Mohit Choudhary for Appellant
Mr. V.B. Konde-Deshmukh A.P.P. for the State

CORAM : B.H. MARLAPALLE &
SMT. ROSHAN DALVI, JJ.

RESERVED ON: 2ND MARCH 2006
PONOUNCED ON : 24TH MARCH 2006

J U D G M E N T (Per Smt. Roshan Dalvi, J.)

1. This appeal impugns the judgment of the learned Additional Sessions Judge, Greater Bombay dated 18th

March, 2005 convicting the accused for the offence of murder of one Amarjeet Bhujaban Ram (Amarjeet) and 326 respectively of the Indian Penal Code (I.P.C.) and sentenced to suffer rigorous imprisonment for life for the offence under Section 302 and to suffer rigorous imprisonment for 7 years for the offence under Section 326 together with payment of fine of Rs.500/- and i/d. to undergo further imprisonment for one year.

2. The accused as well as the victims as also several other witnesses are cobblers working in one shop/factory ``Bollywood Shoe-care" to manufacture foot wear. These persons live, work and sleep in the shop/factory premises.

3. The accused was the supervisor/manager / mukadam.

4. The prosecution case is that on the night intervening 23rd February 2004 and 24th February 2004 the cobblers went to sleep. The accused remained out. He came late at about 4.00 a.m., heavily drunk, and knocked on the door. One worker opened the door. The accused was furious that the door was not opened quickly. The accused abused others, a fight took place

in which the accused assaulted and injured one cobbler Nathuram (p.w.1) on his right eye, between his right eye and his ear and on his face with a `rapi' (an equipment used by cobblers for cutting leather to make shoes and which could be used as a dangerous weapon. The accused also assaulted and injured Amarjeet on his chest which resulted in profuse bleeding and caused injuries on his chest, elbow and hand. These two victims shouted for help. The other cobblers woke up due to the ensuing commotion. One of them opened the door and ran away. Another of them intervened in between and also received hurt. One of them took them to the police station and then to the hospital. One other went up to the police station and returned with Police Constable to the shop/factory. Whilst going they had closed the shutter of the shop. The accused remained inside. He hid in a toilet/bathroom upon the arrival of the police with one of the cobbler who returned to the shop/factory, the shop was searched the accused was arrested. The rapi used in the offence was recovered. Panchanama was drawn. Amarjeet succumbed to the injuries at 9.30 a.m. on the next day.

5. The accused came to be charged under the

aforesaid sections. The learned Judge has held the charge proved. He has convicted the accused and sentenced him as above.

6. The Advocate for the accused fairly conceded that he does not challenge the involvement of the accused in causing the death of Amarjeet. But as per him the charge under Section 302 of Indian Penal Code is not proved and the charge proved by the prosecution could at the most be punishable under Section 304 Part II of Indian Penal Code.

7. He has contended that the accused had no intention to murder either of the victims. Being under the spell of alcohol he has committed the act. The accused earlier took up the defence of right of private defence (RPD) also. That defence also has fairly been given up. It has been the case of the accused that due to his late arrival in the shop/factory the other cobblers were annoyed as their sleep was disturbed. They abused him and said that they would teach him a lesson. He was having his dinner which was a packed dinner (Parcel) obtained from a hotel nearby. The other cobblers assaulted him. He was injured. In the fight that ensued the victims were injured. It is also

admitted that the accused during the fight picked up a rapi, which was available with all the cobblers and which remained near their head amongst other equipments whilst they slept. It is contended on his behalf that the injury caused under such circumstances cannot be stated to be with intention to commit murder. However knowledge that such injury would be caused with a weapon such as the rapi can be imputed upon the accused. It is therefore, contended that the case is made out not under Section 302 of the Indian Penal Code but under Section 304 Part II of the Indian Penal Code.

8. The evidence in this case must be appreciated to see whether the case under Section 302 or Section 304 (II) is made out and what would be the punishment which would meet the ends of justice.

9. It is admitted that the accused came to the shop/factory fully drunk. He banged on the door and had it opened at a late hour. A fight ensued. There are no injuries sustained by the accused. No complaint in that regard is made. No treatment is taken by him. The injuries sustained by Amarjeet resulted in his death within about 6 hours. The other victim also sustained

injuries on his face. It is also admitted that the rapi was used by the accused in the offence. It is a sharp instrument which cuts leather and which was available at hand at the time of the occurance. It is further admitted that the accused has been arrested on that night itself.

10. P.W.1 Nathuram is the injured himself. His narration of the incident is corroborated by his own injuries as well as the injuries on the other victim Amarjeet since deceased. It is further corroborated by p.w. 2 who was the other cobbler in the shop/factory. Their evidence shows that the accused first assaulted p.w.1. Whilst other cobblers, came to his rescue, Amarjeet also received the blow on his hand and suffered injuries on his palm and elbow. He also suffered injury on his left site of his chest.

11. The reason for these injuries was the accused picking up a quarrel with the cobbler, who did not open the door quickly. P.W. 2 took both the injured first to the police station and then to the J.J. Hospital.

12. The evidence of the injured p.w. 1 as well as p.w. 2, who corroborated his testimony, has not been

shaken in the cross examination.

13. P.W.6 was a helper in the shop. He was the one who opened the door. After he opened the door he went back to sleep. He heard both the injured shouting for help ``Bachaav Bachaav". He opened the door and ran outside. P.W.1, 2 and Amarjeet followed him. Whereas p.w. 2 took them to the police station and hospital, this witness went to the house of the employer one Zakir Naseer Khan (p.w.3) to call him to the shop/factory. This witness has deposed only about the commotions , about his opening the door and running away and calling the employer.

14. P.W.3 the owner of the business left the shop/factory at 12.30 a.m. He was woken up at about 4.15 a.m. by p.w. 6. He got the factory door opened (it appears to have been a shutter of the shop). The accused was inside and was arrested.

15. His evidence has been further corroborated by p.w. 10 who is a neighbor and a businessman. He is the independent eye witness of the incident. He was awakened from his sleep. He saw persons shouting

``Bachaav Bachaav" . He saw that he was soaked in blood (Nahayahuva). He saw another person was being assaulted. He rushed to his rescue and pulled the victim away. He saw the accused holding a rapi. He saw that the injuries were caused by the rapi. He was also attacked but he saved himself. The accused ran towards a third person who almost surrendered himself. This eye witness held the accused, whom he described as a rapi wielding person, and resisted the rapi blow. He slapped the accused, pushed him inside the shop and closed it by pulling down the shutter.

16. After confining the accused within the shop, he took the injured till the corner of the lane to get the taxi and accompanied them to the police station. He did not go to the hospital – a police constable whom they first met took the injured to the hospital in the same taxi. This witness went back with another police man to the shop. His evidence has been corroborated by p.w. 3. He has deposed about what happened in the shop also – the blood being collected, accused being arrested and the rapi being recovered at the instance of the accused.

17. His evidence is most cogent, credible, natural and

honest. He identified the accused in Court directly. He did not identify the rapi as a precise weapon used in the crime but said rapi was used by the accused. His evidence is therefore not embellished.

18. P.W.7 is the brother of the employer. He was sent to the shop/factory by the wife of the employer. He saw the police collecting blood and the accused being arrested. He also witnessed the rapi being recovered, produced by the accused from the roof of the toilet near the window.

19. A panchanama of the recovery of the clothes of the accused and the rapi was made. P.W. 4 is the panch who deposed about this fact. P.W.5 is the Police Constable who took the injured to the J.J. Hospital. He has described the injuries. P.W.8 is a casualty Medical Officer who examined the injured in the hospital. He has also described the injuries. P.W.9 is the P.S.I. who first saw the taxi in which the injured were with one another cobbler p.w. 2 and who sent them to J.J. hospital. He recorded their statements in the hospital and obtained the Doctors endorsement thereon after recording their statements.

20. The accused examined 3 witnesses D.W.1 has deposed that he was ``Dead drunk". He also deposed about the quarrel and how the injured wanted to teach the accused a lesson for disturbing their sleep. He is a relative of the accused and hence not an independent witness.

21. D.W.2 deposed about the quarrels similarly. He deposed that when the police came except the accused nobody was there; all had left for the hospital. His evidence shows the presence of the accused and confirms his arrest.

22. D.W.3 as a psychiatric who treated the accused earlier. He deposed that the accused was suffering from depression. The treatment continued until 29.11.2002. He deposed that the medication was sufficient to cure him. But the accused was advised to visit the hospital again. He deposed that the accused had 50% improvement and that he was responding to the treatment. He deposed that all depressions are not madness.

23. The written statement of the accused is that he was so heavily drunk that he was unable to

understand. Yet his written statement shows that after coming to the shop he took the packet of dinner (parcel) and then was assaulted by the 2 injured for having disturbed their sleep. The written statement is conspicuously absent about the injury, if any, suffered by the accused in the alleged assault.

24. We are gratified to note that the Advocate for the accused as an Officer of the Court conceded to the role of the accused as the author of Amarjeet's death in these circumstances. There could not be another opinion. The case of the accused is entirely in vain. The case of self defence is rightly abandoned. The fact of intoxication is admitted. The accused alone is therefore the blame for the entire incident. The shouts of “Bachaav” heard by the neighbor p.w.10 who witnessed the incident upon being awakened shows the entire scenario.

25. The only aspect that remains for consideration is whether the accused had the intention to kill. Since he returned in an inebriated state and abused and assaulted his colleagues shows that a premeditated intention to murder his co-worker cannot be imputed upon him.

26. The next thing to consider is whether he had knowledge that the use of the rapi to injure the victims, more specially Amarjeet, on his chest would cause his death. The accused was a cobbler. He used the rapi as a tool of his trade. He knew its worth and magnitude. He was aware of its capability on leather. Hence he must be imputed the knowledge that when it is used on a human being would cause a fatal injury. Converting the rapi into a dangerous weapon is a fact known to the accused by its admitted use. Yet the accused caused such a severe assault on the chest of Amarjeet that he succumbed to his injuries within a period of 6 hours. He was completely soaked in blood upon receiving the injury on his left side of his chest, which is one of the vital parts of his body. The accused also wielded another severe assault injuring the right eye of Nathuram p.w.1. He knew that the rapi would cause an injury upon wielding it against the eye.

27. The defence of the accused in the trial has been dishonest. There has been no instigation, abuses or assault by the victims. The accused was not even assaulted or injured. It is only he who caused the injuries.

28. The accused must therefore, have the knowledge that such injuries would result in this consequence.

29. However, the fact remains that Amarjeet was injured fatally only because he intervened when Nathuram was injured by the accused and thus he became a victim accidentally. Had it not have been for his intervention, he could have been spared. There is nothing to show that the accused went after him. The injuries caused to Nathuram p.w.1 have not been on any of the vital parts of his body. Amarjeet was given one single blow with rapi and this injury resulted in his death. It was not a preplanned act of all the accused and if regards be had to the totality of the evidence placed before the trial Court by the prosecution, it is clear that the accused had no intentions of causing injury to Amarjeet and as noted earlier he became a victim while trying to save Nathuram from further attacks from the accused. The accused being a cobbler himself, he was aware of the implications of using rapi while attacking a human being and thus he is presumed to have knowledge that the injury caused with such a weapon would result in death. Therefore there is no material to hold that the prosecution proved

its case of an offence punishable under Section 302 of Indian Penal Code against the accused. However the prosecution has proved its case that the accused is guilty of an offence punishable under Section 304 Part II of Indian Penal Code.

30. The accused alone is the cause for the result. His own conduct has been dangerous and detrimental to his colleagues and have caused pain and suffering to p.w. 1 and taken the life of his colleague Amarjeet. The sentence awarded to the accused must meet the ends of justice. It would not, if the accused were to be allowed to throw up his hands under the facade of alcoholism or earlier depression. The Court must not lose sight of the fact that one of the colleagues has lost his life due to the rampage indulged in by the accused (P.W. 10 having deposed about how another colleague also came within the sway of the accused and he himself resisted the rapi and saved himself).

31. The Advocate for the accused has relied upon a number of judgments in support of his contention, that the case under section 304(II) may require punishment of sentence between 6 months to 2 years.

32. In the case of Eknath Malu Ratate Vs. The State of Maharashtra reported in 1998 All MR (Cri.) 443. Exchange of hot words and scuffle resulted in a knife blow inadvertently given on the spur of the moment. The accused was a young man and served as usher in a theater. He was asked by the deceased whether he had a ticket, upon which the scuffle arose when another person who intervened, upon whom the accused inflicted a solitary knife blow on the chest resulting in his death. This was not a solitary blow. The accused was enraged, at the delay in opening the door. He injured 2 colleagues and went on to injure others, even a neighbor. The sentence of 5 years rigorous imprisonment in that case cannot be imported into this case. In this case the accused deserves a more severe punishment.

33. In the case of Asa Ram Vs. State of U.P. reported in 1991 Cr.L.J. 3221 an attack on an intervening father which was suddenly made was held to have a total absence of intention to cause injury. In that case the accused came with a spear and his son with a stick and started beating with stick a person died on the spot. In view of the fact that it was held that the attack was sudden, sentence of 2 years rigorous imprisonment was

imposed, knowledge being imputed upon the accused by use of the spear. In this case the accused has to be imputed clear knowledge of the use of the implement in the attack. The attack in this case is also not as sudden. The accused was enraged which caused him to shower attacks. The harsher punishment is therefore called for.

34. In the case of Gurmail Singh Vs. State of Punjab reported in (1982) 3 Supreme Court Cases 185 a solitary blow of a spear was inflicted upon the victim who intervened in a commotion. No animosity was seen between the accused and the deceased. Only because the injury was sufficient in the ordinary course of nature to cause death but was without any intention of doing so, punishment of a mere 6 months rigorous imprisonment was held sufficient instead of 2 ½ years rigorous imprisonment. That case also must be distinguished from this case which was of a series of blows upon many individuals. Even if the injury on Amarjeet can be taken to be a sudden injury on an intervenor, however fatal, the injuries on Nathuram which preceded it cannot be said to be so sudden and on the spur of the moment. Those were upon mental deliberations for the cause of not opening the door

quickly.

35. In the case of Abani K. Debnath Vs. State of Tripura reported in 2006 Cri. L.J. 314 (Supreme Court). The accused dealt only one blow on the spur of moment upon the intervener after a quarrel took place between the accused and 2 other persons and the deceased succumbed after 7 days upon receiving all injuries which were simple in nature. A conviction under Section 323 was held justified, as also under Section 304(II) instead of Section 300. A sentence of 5 years rigorous imprisonment was held proper. In this case the injury upon Amarjeet was so grievous that it resulted in his death within 6 hours as against the injuries in that case.

36. It can be seen that upon the plea of sentence the case of such sentence as have been awarded in the aforesaid cases is not made out. This was not the case of one fatal blow upon one individual wielded on the spur of the moment as was in all the aforesaid cases.

37. Though a case under Section 304(II) is made out instead of the case under Section 302 as held by the learned Sessions Judge, sentence more than what has

been imposed in the case of a single blow alone would meet ends of justice.

38. In the premises we allow this appeal partly and quash and set aside the order of conviction and sentence under Section 302 of Indian Penal Code. Instead we hold the accused guilty of an offence punishable under Section 304 Part II of Indian Penal Code and sentence him to suffer Rigorous Imprisonment for a period of 8 years. The order of conviction and sentence passed under Section 326 of Indian Penal Code is hereby confirmed. Both the sentences shall run concurrently and the accused will be entitled for set off, if any, as per \the provisions of Cr. P.C.

(SMT. ROSHAN DALVI, J.) (B.H. MARLAPALLE, J.)